



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, and 744

Docket No. 210405-0075

RIN 0694-AI38

Expansion of Certain End-Use and End-User Controls and Controls on Specific Activities of U.S. Persons; Corrections; and Burma Sanctions.

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule.

SUMMARY: On January 15, 2021, the Bureau of Industry and Security (BIS) published an interim final rule establishing end-use and end-user controls, as well as controls on specific activities of U.S. persons, with respect to certain military-intelligence end uses and end users. These new controls were made effective on March 16, 2021. In this interim final rule, BIS is making technical corrections and conforming changes to certain provisions of the Export Administration Regulations to address inadvertent errors introduced by the January 15, 2021 rule. This interim final rule also adds Burma to the list of countries subject to military-intelligence-related controls that were added by the prior rule. This action strengthens sanctions on Burma that were imposed on March 8, 2021 in response to a February 1, 2021 military coup.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: For questions concerning Burma, please contact Tracy Patts, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, by email at

Foreign.Policy@bis.doc.gov, or by phone at 202-482-4252. For all other questions, please contact Philip Johnson, Senior Advisor, Export Enforcement, Bureau of Industry and Security, by email at Philip.Johnson@bis.doc.gov, or by phone at (202) 482-3685.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801-4852). ECRA directs the President to control exports, reexports, and transfers (in-country), as well as the activities of U.S. persons, in connection with foreign military intelligence services (50 U.S.C. 4812(a)(2)(F)), and provides authority to the Secretary of Commerce to implement such controls on behalf of the President (50 U.S.C. 4813(a)(16)). Accordingly, on January 15, 2021, BIS published an interim final rule, Expansion of Certain End-Use and End-User Controls and Controls on Specific Activities of U.S. Persons, in the *Federal Register* (86 FR 4865) (“January 15 rule”) amending parts 730, 734, 736, and 744 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 774) to implement, among other things, controls on exports, reexports, and transfers (in-country), as well as specific activities of U.S. persons, in connection with military-intelligence end uses and end users in China, Cuba, Iran, North Korea, Russia, Syria, and Venezuela. On March 17, 2021, BIS published a rule in the *Federal Register* (86 FR 14534), which corrected an erroneous instruction in the January 15 rule, which would have resulted in the inadvertent deletion of two provisions of the EAR’s controls on rocket systems and unmanned aerial vehicles. The January 15 rule took effect on March 16, 2021.

Technical Corrections

BIS is now revising §§ 744.6 and 744.22 of the EAR to implement certain technical corrections to address errors that were inadvertently introduced as part of the January 15 rule.

Specifically, BIS is adding double quotes around the term “U.S. person,” where that term appears in § 744.6(d) and (e), because that is a defined term that appears in § 772.1 of the EAR. In addition, BIS is revising the definition of ‘military-intelligence end use’ in § 744.22(f)(1) of the EAR to remove the term “use.” “Use” is a defined term in § 772.1 of the EAR meaning “[o]peration, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.” Because § 744.22(f)(1) already includes “operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing,” the inclusion of the term “use” in this section of the EAR is redundant and unnecessary. Likewise, BIS is removing the word “design” from § 744.22(f)(1) of the EAR as redundant and unnecessary because that section already includes the § 772.1 defined term “development,” which includes design, design research, design analyses, design concepts, and other design-related activities.

In addition, the January 15 rule omitted a necessary conforming change to § 732.3(j) of the EAR to include an evaluation of the applicability of any U.S. person activity controls pursuant to § 744.6 of the EAR. Accordingly, BIS is revising § 732.3(j) to reflect that U.S. person activity controls apply not only with respect to certain weapons of mass destruction proliferation end uses, but also to certain military-intelligence end uses and end users, in accordance with the amendments made to § 744.6 of the EAR in the January 15 rule. In addition, BIS is revising the reference in § 732.3(j) of the EAR to the definition of the term “U.S. person” in part 744 of the EAR to direct the reader to § 772.1 of the EAR for a definition of that term, as the January 15 rule removed the definition of “U.S. person” from § 744.6 of the EAR.

Burma Sanctions

On March 8, 2021, BIS published a final rule, *Burma: Implementation of Sanctions*, in the *Federal Register* (86 FR 13173) (“March 8 rule”) amending various provisions of the EAR to implement sanctions on Burma, following a February 1, 2021 military coup that overthrew the country’s democratically-elected government and the military’s subsequent arrest and detention

of government leaders, human rights defenders, and journalists. Among other revisions, the March 8 rule amended § 744.21 of the EAR to add Burma to the list of countries subject to military end-use and end-user controls. The March 8 rule and a second final rule, Addition of Entities to the Entity List, issued that day (March 08, 2021; 86 FR 13179) adding four entities (two government ministries and two related commercial enterprises) in Burma to the Entity List, were consistent with Executive Order 14014 of February 10, 2021 (86 FR 9429), in which President Biden declared a national emergency to address the threat posed to the United States by the situation in, and in relation to, Burma.

To strengthen sanctions on Burma, and to address in particular the Burmese military's continued oppression and surveillance of the Burmese people, whether by restricting Internet access or through the imprisonment of protesters and civil society activists, BIS is hereby amending the EAR to apply military-intelligence-related controls to Burma and to restrict U.S. persons' activities in connection with military-intelligence end uses and end users in Burma. Specifically, BIS is amending § 744.22 of the EAR to impose a license requirement on the export, reexport, or transfer (in-country) of any item subject to the EAR if an exporter, reexporter, or transferor has knowledge, or is informed by BIS, that the item is destined for a military-intelligence end use or end user in Burma, specifically including Burma's Office of Chief of Military Security Affairs (OCMSA), a branch of the Burmese armed forces tasked with monitoring and interrogating Burmese protesters, and the Directorate of Signal, a branch of the Burmese Army responsible for the military telecommunications network. Additionally, BIS is revising §§ 736.2(b)(7)(i)(A)(5) (General Prohibition Seven, on U.S. Person controls) and 744.6(b)(5) (Restrictions on specific activities of "U.S. Persons") of the EAR to add Burma to the list of countries in which U.S. persons are prohibited from supporting military-intelligence end uses or end users, even when such support does not involve an item subject to the EAR. BIS is taking this action to prevent the Burmese military, and specifically its intelligence operations, from benefitting from access to items subject to the EAR, including sensitive technology, or the

expertise of U.S. persons. BIS is also making a conforming change to § 744.1(a) of the EAR, which provides an overview of the end-use and end-user-based controls in part 744 of the EAR, to reflect the fact that military end-use and end-user controls, as well as military-intelligence end-use and end-user controls, apply with respect to Burma.

Although BIS is issuing this interim final rule to make certain technical corrections and to implement additional Burma sanctions, BIS continues to review public comments received in response to the January 15 rule to assess whether any revisions to the scope of controls set forth in that rule are warranted.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule is not a “significant regulatory action” for purposes of Executive Order 12866.
2. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

3. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable.

Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

5. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection of information previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission. BIS expects the burden hours associated with this collection to not significantly increase with the publication of this rule.

Savings Clause

Shipments of items that may no longer be made under No License Required (NLR) or license exception as a result of this action and were on dock for loading, on lighter, laden aboard an exporting or transferring carrier, or en route aboard a carrier to a port of export or reexport on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], pursuant to actual orders for export to Burma, reexport to Burma, or transfer (in-country) within Burma may proceed to their destination under the prior authorization.

List of Subjects

15 CFR Part 732

Steps for using the EAR.

15 CFR Part 736

Exports, General prohibitions.

15 CFR Part 744

End-user and end-use based control policy, Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 732, 736, and 744 of the EAR (15 CFR parts 730 through 774) are amended as follows:

PART 732 – STEPS FOR USING THE EAR

1. The authority citation for part 732 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

2. Section 732.3 is amended by revising paragraph (j) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

(j) *Step 15: Restrictions on specific activities of “U.S. persons.”* (1) Review the scope of activity prohibited by General Prohibition Seven (“U.S. person” activities) (§ 736.2(b)(7) of the EAR) as that activity is described in § 744.6 of the EAR. Keep in mind that such activity is not limited to exports, reexports, or transfers (in-country). “U.S. person” activities extend to services and shipping or transmitting certain wholly foreign-origin items, or facilitating such shipments or transmissions, in ‘support’ of the specified weapons of mass destruction and military-

intelligence-related end uses and end users and is not limited to items listed on the CCL or designated EAR99. See § 744.6(b)(6) of the EAR for the full definition of ‘support,’ which includes ordering, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding, or conducting negotiations in furtherance of.

(2) Review the definition of “U.S. person” in § 772.1 of the EAR.

PART 736 –GENERAL PROHIBITIONS

3. The authority citation for part 736 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 12, 2020, 85 FR 72897 (November 13, 2020); Notice of May 7, 2020, 85 FR 27639.

4. Section 736.2 is amended by revising paragraph (b)(7)(i)(A)(5) and adding reserved paragraph (b)(7)(i)(B) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

(b) ***

(7) ***

(i) ***

(A) ***

(5) A ‘military-intelligence end use’ or a ‘military-intelligence end user,’ as defined in § 744.22(f) of the EAR, in Burma, the People’s Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2.

(B) [Reserved].

PART 744 – CONTROL POLICY; END-USER AND END-USE BASED

5. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

6. Section 744.1 is amended by revising paragraph (a)(1) to read as follows:

§ 744.1 General provisions.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end users and end uses as introduced under General Prohibitions Five (End use/End users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, and 744.4 prohibit exports, reexports, and transfers (in-country) of items subject to the EAR to defined nuclear, missile, and chemical and biological weapons proliferation activities. Section 744.5 prohibits exports, reexports, and transfers (in-country) of items subject to the EAR

to defined nuclear maritime end-uses. Consistent with General Prohibition Seven (Support of Proliferation Activities and certain Military-Intelligence End Uses and End Users (“U.S. person” activities)), §744.6 prohibits specific activities by U.S. persons in support of certain nuclear, missile, chemical and biological weapons end uses, and whole plants for chemical weapons precursors, as well as certain military-intelligence end uses and military-intelligence end users. Section 744.7 prohibits exports and reexports of certain items for certain aircraft and vessels. Section 744.8 prohibits exports and reexports without authorization to certain parties who have been designated as proliferators of weapons of mass destruction or as supporters of such proliferators pursuant to Executive Order 13382. Section 744.9 sets forth restrictions on exports, reexports, and transfers (in-country) of certain cameras, systems, or related components. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in supplement no. 4 of this part. Section 744.11 imposes license requirements, to the extent specified in supplement no. 4 to this part on entities listed in supplement no. 4 to this part for activities contrary to the national security or foreign policy interests of the United States. Sections 744.12, 744.13, and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.15 sets forth the conditions for exports, reexports, and transfers (in-country) to persons listed on the Unverified List (UVL) in supplement no. 6 to this part, the criteria for revising the UVL, as well as procedures for requesting removal or modification of a listing on the UVL. Section 744.16 sets forth the license requirements, policies and procedures for the Entity List. Section 744.17 sets forth restrictions on exports, reexports, and transfers (in-country) of microprocessors and associated “software” and “technology” for military end uses and to military end users. Section 744.18 sets forth restrictions on exports, reexports, and transfers to persons designated in or pursuant to Executive Order 13315. Section 744.19 sets forth BIS's licensing policy for applications for exports or reexports when a party to the transaction is an entity that has been

sanctioned pursuant to any of three specified statutes that require certain license applications to be denied. Section 744.20 requires a license, to the extent specified in supplement no. 4 to this part, for exports and reexports of items subject to the EAR destined to certain sanctioned entities listed in supplement no. 4 to this part. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain transfers of items subject to the EAR to denied parties. Section 744.21 imposes restrictions for exports, reexports and transfers (in-country) of items on the CCL for a military end use or military end user in Burma, the People's Republic of China (PRC or China), Russia, or Venezuela. Section 744.22 imposes restrictions on exports, reexports, and transfers (in-country) for a military-intelligence end use or military-intelligence end user in Burma, China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

7. Section 744.6 is amended by:

a. Revising paragraph (b)(5);

b. Adding double quotation marks around the term “U.S. persons” in paragraph (d)(2);

and

c. Adding double quotation marks around the term “U.S. person” in paragraphs (e)(1) and (2).

The revision reads as follows:

§ 744.6 Restrictions on specific activities of “U.S. persons.”

(b) ***

(5) A ‘military-intelligence end use’ or a ‘military-intelligence end user,’ as defined in § 744.22(f) of the EAR, in Burma, the People’s Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2.

8. Section 744.22 is amended by revising paragraphs (a), (b), and (f), to read as follows:

§ 744.22 Restrictions on exports, reexports, and transfers (in-country) to certain military-intelligence end uses or end users.

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) any item subject to the EAR without a license from BIS if, at the time of the export, reexport, or transfer (in-country), you have “knowledge” that the item is intended, entirely or in part, for a ‘military-intelligence end use’ or a ‘military-intelligence end user’ in Burma, the People’s Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the *Federal Register*, or through a separate notice published in the *Federal Register*, that a license is required for specific exports, reexports, or transfers (in-country) of any item subject to the EAR because there is an unacceptable risk of use in, or diversion to, a ‘military-intelligence end use’ or a ‘military-intelligence end user’ in Burma, the People’s Republic of China, Russia, or Venezuela; or a country listed in Country Group E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

(f) *Definitions.* (1) ‘Military-intelligence end use’ means the “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of, or incorporation into, items described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations), or classified under ECCNs ending in

“A018” or under “600 series” ECCNs, which are intended to support the actions or functions of a ‘military-intelligence end user,’ as defined in this section.

(2) ‘Military-intelligence end user’ means any intelligence or reconnaissance organization of the armed services (army, navy, marine, air force, or coast guard); or national guard. For license requirements applicable to other government intelligence or reconnaissance organizations in Burma, China, Russia, or Venezuela, see § 744.21 of the EAR. Military-intelligence end users subject to the license requirements set forth in this § 744.22 include, but are not limited to, the following:

(i) *Burma*. Office of Chief of Military Security Affairs (OCMSA) and the Directorate of Signal.

(ii) *Cuba*. Directorate of Military Intelligence (DIM) and Directorate of Military Counterintelligence (CIM).

(iii) *China, People’s Republic of*. Intelligence Bureau of the Joint Staff Department.

(iv) *Iran*. Islamic Revolutionary Guard Corps Intelligence Organization (IRGC-IO) and Artesh Directorate for Intelligence (J2).

(v) *Korea, North*. Reconnaissance General Bureau (RGB).

(vi) *Russia*. Main Intelligence Directorate (GRU).

(vii) *Syria*. Military Intelligence Service.

(viii) *Venezuela*. General Directorate of Military Counterintelligence (DGCIM).

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